

AMENDED IN SENATE JUNE 11, 2007

AMENDED IN ASSEMBLY MARCH 27, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 1364

Introduced by Assembly Member Benoit

February 23, 2007

An act to amend Section 11691 of the Insurance Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1364, as amended, Benoit. Workers' compensation.

Existing law requires insurers issuing workers' compensation insurance, from time to time as demanded by the commissioner, to deposit with the Treasurer, a bank or savings and loan association authorized to engage in the trust business, or a trust company, cash instruments or approved interest-bearing securities as a prerequisite to admission to transact workers' compensation insurance for the purpose of paying compensable workers' compensation claims under policies issued by the insurer in the event the insurer fails to pay those claims when they come due. Existing law provides that the deposit shall be maintained at a deposit value specified by the commissioner, but in any event no less than an amount determined, as specified.

~~This bill would provide that if the insurer providing the deposit is domiciled in a state where state law provides that, with respect to claims paid after the entry of the an order of liquidation under large deductible workers' compensation policies, any part of the reimbursement proceeds owed by insureds, whether paid directly or through a draw of collateral, are generally assets of the estate, then the amount of the insurer's deposit~~

~~shall be calculated based on the gross amount of that insurer's liabilities for loss and loss adjustment expenses under such policies without regard to the deductible, and such reserves shall not be reduced by any collateral or reimbursement obligations insureds were required to provide under such policies.~~

This bill would provide that if the insurer providing the deposit is domiciled in a state where state law, as specified, provides that with respect to covered claims, the deductible amount paid by a guarantee association after the entry of an order of liquidation under large deductible workers' compensation policies, any part of the reimbursement proceeds, as specified, are general assets of the estate, then the amount of the insurer's deposit shall be calculated based on the gross amount of that insurer's liabilities for loss and loss adjustment expenses under those policies without regard to the deductible, and those reserves may not be reduced by any collateral or reimbursement obligations insureds were required to provide under those policies.

The bill would further provide that nothing in this section shall require that the deposit be calculated based on gross amounts of liabilities described above if the domiciliary state does not have an existing law, as specified, providing that the reimbursement proceeds described above are general assets of the estate.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11691 of the Insurance Code is amended
2 to read:
3 11691. (a) In order to provide protection to the workers of this
4 state in the event that the insurers issuing workers' compensation
5 insurance to employers fail to pay compensable workers'
6 compensation claims; when due, except in the case of the State
7 Compensation Insurance Fund, every insurer desiring admission
8 to transact workers' compensation insurance, or workers'
9 compensation reinsurance business, or desiring to reinsure the
10 injury, disablement, or death portions of policies of workers'
11 compensation insurance under the class of disability insurance
12 shall, as a prerequisite to admission, or ability to reinsure the injury,
13 disablement, or death portion of policies of workers' compensation
14 insurance under the class of disability insurance, deposit cash

1 instruments or approved interest-bearing securities or approved
2 stocks readily convertible into cash, investment certificates, or
3 share accounts issued by a savings and loan association doing
4 business in this state and insured by the Federal Deposit Insurance
5 Corporation, certificates of deposit or savings deposits in a bank
6 licensed to do business in this state, or approved letters of credit
7 that perform in material respects as any other security allowable
8 as a form of deposit for purposes of a workers' compensation
9 deposit and that meet the standard set forth in Section 922.5, or
10 approved securities registered with a qualified depository located
11 in a reciprocal state as defined in Section 1104.9, with that deposit
12 to be in an amount and subject to any exceptions as set forth in
13 this article. The deposit shall be made from time to time as
14 demanded by the commissioner and may be made with the
15 Treasurer, or a bank or savings and loan association authorized to
16 engage in the trust business pursuant to Division 1 (commencing
17 with Section 99) or Division 2 (commencing with Section 5000)
18 of the Financial Code, or a trust company. A deposit of securities
19 registered with a qualified depository located in a reciprocal state
20 as defined in Section 1104.9 may only be made in a bank or savings
21 and loan association authorized to engage in the trust business
22 pursuant to Division 1 (commencing with Section 99) or Division
23 2 (commencing with Section 5000) of the Financial Code, or a
24 trust company, licensed to do business and located in this state
25 that is a qualified custodian as defined in paragraph (1) of
26 subdivision (a) of Section 1104.9 and that maintains deposits of
27 at least seven hundred fifty million dollars (\$750,000,000). The
28 deposit shall be made subject to the approval of the commissioner
29 under those rules and regulations that he or she shall promulgate.
30 The deposit shall be maintained at a deposit value specified by the
31 commissioner, but in any event no less than one hundred thousand
32 dollars (\$100,000), nor less than the reserves required of the insurer
33 to be maintained under any of the provisions of Article 1
34 (commencing with Section 11550) of Chapter 1 of Part 3 of
35 Division 2, relating to loss reserves on workers' compensation
36 business of the insurer in this state, nor less than the sum of the
37 amounts specified in subdivision (a) of Section 11693, whichever
38 is greater. The deposit shall be for the purpose of paying
39 compensable workers' compensation claims under policies issued
40 by the insurer or reinsured by the admitted reinsurer and expenses

1 as provided in Section 11698.02, in the event the insurer or
2 reinsurer fails to pay those claims when they come due. If the
3 ~~insurer providing the deposit is domiciled in a state where state~~
4 ~~law provides that, with respect to claims paid after the entry of the~~
5 ~~an order of liquidation under large deductible workers'~~
6 ~~compensation policies, any part of the reimbursement proceeds~~
7 ~~owed by insureds, whether paid directly or through a draw of~~
8 ~~collateral, are generally assets of the estate, then the amount of the~~
9 ~~insurer's deposit pursuant to this article shall be calculated based~~
10 ~~on the gross amount of that insurer's liabilities for loss and loss~~
11 ~~adjustment expenses under such policies without regard to the~~
12 ~~deductible, and such reserves shall not be reduced by any collateral~~
13 ~~or reimbursement obligations insureds were required to provide~~
14 ~~under those policies.~~ *insurer providing the deposit is domiciled in*
15 *a state where a state statute, regulation, or court decision provides*
16 *that, with respect to covered claims within the deductible amount*
17 *that are paid by a guarantee association after the entry of an order*
18 *of liquidation under large deductible workers' compensation*
19 *policies, any part of the reimbursement proceeds, other than the*
20 *reasonable expenses of the receiver related to treatment of*
21 *deductible policy arrangements of insurance companies in*
22 *liquidation, owed by insureds on those deductible amounts, whether*
23 *paid directly or through a draw of collateral, are general assets*
24 *of the estate, then the amount of the insurer's deposit pursuant to*
25 *this article shall be calculated based on the gross amount of that*
26 *insurer's liabilities for loss and loss adjustment expenses under*
27 *those policies without regard to the deductible, and those reserves*
28 *shall not be reduced by any collateral or reimbursement*
29 *obligations insureds were required to provide under those policies.*
30 *Nothing in this section shall require that the deposit be*
31 *calculated based on gross amounts of liabilities described above*
32 *if the domiciliary state does not have an existing statute, regulation,*
33 *or court decision providing that the reimbursement proceeds*
34 *described above are general assets of the estate.*
35 (b) Each insurer or reinsurer desiring to have the ability to
36 reinsure the injury, disablement, or death portions of policies of
37 workers' compensation under the class of disability insurance shall
38 provide prior notice to the commissioner, in the manner and form
39 prescribed by the commissioner of its intent to reinsure that
40 insurance. In the event of late notice, a late filing fee shall be

1 imposed on the reinsurer pursuant to Section 924 for failure to
2 notify the commissioner of its intent to reinsure workers'
3 compensation insurance.

4 (c) If the deposit required by this section is not made with the
5 Treasurer, then the depositor shall execute a trust agreement in a
6 form approved by the commissioner between the insurer, the
7 institution in which the deposit is made or, where applicable, the
8 qualified custodian of the deposit, and the commissioner, that
9 grants to the commissioner the authority to withdraw the deposit
10 as set forth in Sections 11691.2, 11696, 11698, and 11698.3. The
11 insurer shall also execute and deliver in duplicate to the
12 commissioner a power of attorney in favor of the commissioner
13 for the purposes specified herein, supported by a resolution of the
14 depositor's board of directors. The power of attorney and director's
15 resolution shall be on forms approved by the commissioner, shall
16 provide that the power of attorney cannot be revoked or withdrawn
17 without the consent of the commissioner, and shall be
18 acknowledged as required by law.

19 (d) (1) The commissioner shall require payment in advance of
20 fees for the initial filing of a trust agreement with a bank, savings
21 and loan association, or trust company on deposits made pursuant
22 to subdivision (a); for each amendment, supplement, or other
23 change to the deposit agreement; for receiving and processing
24 deposit schedules pursuant to this section; and for each withdrawal,
25 substitution, or any other change in the deposit. The fees shall be
26 set forth in the department's Schedule of Fees and Charges.

27 (2) The commissioner shall require payment in advance of a
28 fee for the initial filing of each letter of credit utilized pursuant to
29 subdivision (a). In addition, the commissioner shall require
30 payment in advance of a fee for each amendment of a letter of
31 credit. The fees shall be set forth in the department's Schedule of
32 Fees and Charges.

33 (e) Any workers' compensation insurer that deposits cash or
34 cash equivalents pursuant to this section shall be entitled to a
35 prompt refund of those deposits in excess of the amount determined
36 by the commissioner pursuant to subdivision (a). The commissioner
37 shall cause to be refunded any deposits determined by the
38 commissioner to be in excess of the amount required by subdivision
39 (a) within 30 days of that determination. In the alternative, an
40 insurer may use any excess deposit funds to offset a demand by

1 the commissioner to increase its deposit due to the failure of a
2 reinsurer to make a deposit pursuant to this section.

3 (f) (1) As of January 1, 2003, an admitted insurer reinsuring
4 business covered in this article (hereafter referred to as reinsurer)
5 shall identify to the commissioner, in a form prescribed by the
6 commissioner, amounts deposited for credit in the name of each
7 ceding insurer.

8 (2) Beginning January 1, 2005, all reinsurance agreements
9 covering claims and obligations under business covered by this
10 article, and allowable for purposes of granting a ceding carrier a
11 deposit credit, shall include a provision granting the commissioner,
12 in the event of a delinquency proceeding, receivership, or
13 insolvency of a ceding insurer, any sums from a reinsurer's deposit
14 that are necessary for the commissioner to pay those reinsured
15 claims and obligations, or to ensure their payment by the California
16 Insurance Guarantee Association, deemed by the commissioner
17 due under the reinsurance agreement, upon failure of the reinsurer
18 for any reason to make payments under the policy of reinsurance.
19 The commissioner shall give 30 days' notice prior to drawing upon
20 these funds of an intent to do so. Notwithstanding the
21 commissioner's right to draw on these funds, the reinsurer shall
22 otherwise retain its right to determine the validity of those claims
23 and obligations and to contest their payment under the reinsurance
24 agreement. Prior to a reinsurer's deposit being drawn upon, in
25 whole or in part, by the department, the department shall provide
26 a reinsurer with an explanation of procedures that a reinsurer may
27 use to explain to the department why the use of the reinsurer's
28 deposit may not be appropriate under the reinsurance agreement.

29 (3) No reinsurer entering into a contract identified in paragraph
30 (2), beginning on or after January 1, 2005, may cede claims or
31 obligations assumed from a ceding insurer unless the deposit
32 securing the ceded claims or obligations is governed by paragraph
33 (2) or, upon approval of the commissioner, would secure the ceded
34 claims or obligations in all material respects and in the same
35 manner as a deposit identified in paragraph (2) above.

36 (4) All sums received from the reinsurer by the commissioner
37 for those claims paid by the California Insurance Guarantee
38 Association shall be held separate and apart from and not included
39 in the general assets of the insolvent insurer, and shall be
40 transferred to the California Insurance Guarantee Association upon

1 receipt by the commissioner. In the event of a final judgment or
2 settlement adverse to the drawing of funds by the commissioner
3 pursuant to paragraph (2) or (3), the California Insurance Guarantee
4 Association shall repay funds it obtained to pay covered claims
5 and shall, if necessary, either levy a surcharge as needed or seek
6 legislative approval to levy the surcharge if the California Insurance
7 Guarantee Association is already levying the maximum surcharge
8 permissible under law.

9 (g) If a reinsurer has not maintained deposits as required by
10 subdivision (a) in amounts equal to the amounts of deposit credits
11 claimed by its ceding insurers, the commissioner, after notifying
12 the reinsurer and its ceding insurers of the deposit shortfall and
13 allowing 15 days from the date of the notice for the deposit shortfall
14 to be corrected, may disallow all or a portion of the reserve credits
15 claimed by the ceding insurers. A ceding insurer disallowed a
16 reserve credit pursuant to this provision shall immediately make
17 the deposit required by this section.

18 (h) For interest-bearing securities that are debt securities and
19 include principal payment features prior to maturity that are utilized
20 pursuant to subdivision (a), all principal payments received must
21 be retained as part of the deposit.

22 (i) Withdrawal of any amount of the deposit required under
23 subdivision (a) that results in a reduction of the required amount
24 of the deposit may only occur with the prior written consent of the
25 commissioner.